IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-700

WALTER FLEISHER CO., INC.,

Petitioner,

vs.

COUNTY OF LOS ANGELES and CITY OF LOS ANGELES,

Respondents.

On Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District

BRIEF FOR PETITIONER

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TOPICAL INDEX

	Page
Table of Authorities	iii
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	3
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENTS	6
ARGUMENTS	7
I THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION DOES NOT PROHIBIT A STATE FROM CLASSIFYING AND EXEMPTING FROM PERSONAL PROPERTY TAXES INVENTORY WHICH HAD BEEN IMPORTED INTO THE UNITED STATES AND IS DESTINED FOR SHIPMENT OUTSIDE OF THE STATE OF CALIFORNIA	7

II RESPONDENTS COUNTY OF LOS ANGELES AND CITY OF LOS ANGELES HAVE NO STANDING TO CHALLENGE THE CONSTITUTIONALITY OF SECTION 225 19

A. The Court of Appeal Has Incorrectly Concluded That the Board of Supervisors Have Standing, Even Though Not Parties. 21

B. Respondents Are Not Within the Class to Be Protected By the Commerce Clause. 24

CONCLUSION 27

APPENDIX

TABLE OF AUTHORITIES

Cases	Page
Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959)	7, 13, 14, 15
Appeal of Martin, (S.Ct. N.C. 1974) 209 S.E.2d 766	7, 24
Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970)	25
Baker v. Carr, 369 U.S. 186 (1962)	21
Board of Education v. Allen, 392 U.S. 236 (1968)	21, 22
Boston Stock Exchange v. State Tax Commissioner, 429 U.S. 318 (1977)	9, 13
City of New York v. Richardson, 473 F.2d 923 (1973)	20, 21, 22
Community Television of Southern California v. County of Los Angeles, 44 Cal. App. 3d 990, 119 Cal. Rptr. 276 (1975)	24
Complete Auto Transit v. Brady, 430 U.S. 274 (1977)	9, 12

Data Processing Service v. Camp,
397 U.S. 150 20

H. P. Hood & Sons, Inc. v. Du Mond,
336 U.S. 525 (1949) 26

Hughes v. Alexandria Scrap Corp.,
426 U.S. 794 (1976) 9

Japan Lines Ltd. v. County of Los Angeles,
441 U.S. 434 (1979) 6, 7, 10, 18

Knoff v. San Francisco,
1 Cal. App. 3d 184,
81 Cal. Rptr. 683 (1969) 22

Memphis Steam Laundry Cleaner, Inc.
v. Stone,
342 U.S. 389 (1952) 25

Moorman Mfg. Co. v. Bair,
437 U.S. 267 (1978) 18

Nash Sales v. City of Milwaukee,
(S.Ct. Wisc. 1929) 224 N.E. 126 7

National Bellas Hess v. Dept. of Revenue,
386 U.S. 753 16

Pawhuska v. Pahhuska Oil Co.,
250 U.S. 394 (1919) 19

Philadelphia v. New Jersey,
437 U.S. 617 (1977) 10

Raley v. Ohio,
264 U.S. 157 (1924) 7

Sears, Roebuck & Co. v.
County of Los Angeles,
October Term, 1979,
No. 78-1577 3, 5

State Bd. of Tax Comm'rs. v.
Carrier Corp.,
(S.Ct. Ind. 1977) 365 N.E.2d 1153,
365 N.E.2d 1358 7

Trenton v. New Jersey,
262 U.S. 18 (1923) 19

Washington Revenue Dept. v.
Association of Washington Stevedoring
Companies,
435 U.S. 734 (1978) 9, 12, 16

Williams v. Mayor & City Council
of Baltimore,
289 U.S. 36 (1933) 19, 20

Zee Toys v. County of Los Angeles,
85 Cal. App. 3d 763,
149 Cal. Rptr. 750 (1978) 5, 8, 9, 12
13, 16, 19
21, 23, 24

Constitution

California Constitution,
Article XIII, Section 2 4

United States Constitution,
Article I, Section 8, Clause 3 3

Statutes

California Revenue and Taxation Code,
Section 225 3, 4, 5, 6
7, 8, 10
12, 19

28 U.S.C. Section 1257(3) 2

Textbooks

P. Bator, et al., Hart and Wechsler's,
The Federal System (2d ed. 1973) at 182 19

The Federalist, No. 11, at 52
(Cooke ed. 1961) 26

Maltz, The Berger Court,
The Commerce Clause, and
The Problems of Differential
Treatment, 54 Ind. L. J. 165 13

13 C. Wright, et al., Federal
Practice and Procedure,
Section 3531, at 234 19

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The order of the trial court is not officially reported. The opinion of the Court of Appeal was filed July 25, 1979, and certified for nonpublication. The opinion is attached as Appendix B to the petition

for certiorari.[1/] A petition for hearing was denied by the Supreme Court of California on September 20, 1979.

JURISDICTION

The decision of the Court of Appeal was filed July 25, 1979, and the Supreme Court of California denied a petition for hearing September 20, 1979. The petition for writ of certiorari was filed with this Court October 31, 1979. The petition was granted April 28, 1980. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Does a California ad valorem property tax statute which classifies and exempts from taxation property manufactured or produced outside the United States and imported into California for transshipment out of the state constitute a violation of the Commerce Clause of the United States Constitution because a similar exemption is not

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[1/] The Appendix attached to the Petition for Certiorari shall be referred to as "Pet. App." followed by the appropriate page numbers. The separate Appendix shall be referred to as "A." followed by page numbers. The Petition for Certiorari shall be referred to as "Pet." followed by page numbers.

provided to personal property which had originated either in California or been brought into California from other states?

2. Do the County of Los Angeles and City of Los Angeles, subdivisions of the State of California, have standing to attack the constitutionality of an exemption statute enacted by the State Legislature as part of its overall scheme of taxing personal property? 2/

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Article I, Section 8, Clause 3 of the United States Constitution, which provides: "The Congress shall have Power . . . To regulate Commerce with foreign Nationa, and among the several States, and with the Indian Tribes. . . ."

2. California Revenue and Taxation Code Section 225, providing an exemption for personal property manufactured or produced outside of the State and brought into the State for transshipment out of the United States or manufactured or produced outside of the

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2/ Although the issue of standing is not set forth in the Petition for Certiorari, it is briefed herein since the issue was raised by the Court during oral argument in Sears, Roebuck & Co. v. County of Los Angeles, October Term, 1979, No. 78-1577.

United States and brought into the State for transshipment out of this State. (Complete text of the statute is set forth in Pet. App. A.)

STATEMENT OF THE CASE

Under the California Constitution, Article XIII, Section 2, the Legislature may provide for personal property taxes, exempting and classifying such property as it sees fit. Pursuant to this authorization the State of California, by both constitutional provision and by statute, has provided for a pattern of personal property taxes and exemptions. In 1975 the Legislature determined that it was in the best interests of the state to provide an exemption to certain personal property which had been manufactured or produced outside of the State of California. The State's interest in providing for such exemption was to encourage the importing, warehousing and distribution industries to locate in and use California's harbors, ports and other facilities. No distinction was made between the type of business or industry claiming the exemption, nor their residence. All persons owning personal property of the type classified by Revenue and Taxation Code Section 225 were entitled to an exemption.

Walter Fleisher Company, Inc., imports personal property from foreign countries, warehouses them in the County of Los Angeles for resale and subsequent shipment to its customers, both within and without the State of California. For the 1976-77 tax year the company was denied

an exemption under Section 225, paid its tax and filed this lawsuit. Petitioner filed a motion for summary judgment, which was granted by the trial court and judgment entered. This judgment was reversed by the Court of Appeal, relying on Zee Toys v. County of Los Angeles, 85 Cal. App. 3d 763, 149 Cal. Rptr. 750 (1978). The facts of Zee Toys v. County of Los Angeles and Sears, Roebuck & Co. v. County of Los Angeles are virtually identical. Zee Toys, who did not petition this Court for hearing, is a wholesale importer, as is the petitioner herein, Walter Fleisher Co., Inc. Sears, Roebuck & Co. is a retailer warehousing in the County of Los Angeles and distributing to its retail outlets both within and without the State. 3/

3/ Also pending in this Court is Sears, Roebuck & Co. v. County of Los Angeles, October Term 1978, No. 78-1577. Petitioner in the instant case relies on and shall attempt not to duplicate arguments set forth in the briefs filed in such litigation, including:

1. Petition for certiorari, amicus brief filed in support of petition for certiorari;

2. Respondents' opposition to petition for certiorari;

3. Brief for the petitioner, response and reply briefs;

4. Briefs of amicus in support of petitioner, including the brief of the Solicitor General of the United States.

SUMMARY OF ARGUMENTS

1. There is no constitutional prohibition under the Commerce Clause to classifying different types of goods for differential property tax treatment. A state may tax some property and exempt others based on the type of goods involved. Such distinctions are constitutional as long as they are not an unreasonable classification under the Due Process or Equal Protection Clause of the Constitution.

2. The purpose of the Commerce Clause is to prevent discrimination against interstate or foreign commerce vis a vis intrastate commerce. The Commerce Clause provides a prohibition against the State using their taxing authority to favor local or intrastate interests.

3. Even if there is a burden on commerce, either international or interstate commerce, there must be a balance of the State interest involved against the burden imposed. A per se test or a direct/indirect test is not sufficient.

4. When foreign commerce is involved, before a distinction will be struck down, the additional tests set forth in Japan Lines, Ltd. v. County of Los Angeles, 441 U.S. 434 (1979), must be met.

5. The County of Los Angeles and the City of Los Angeles do not have standing to contest the constitutionality of Section 225. They are not among the class protected by the Commerce Clause.

ARGUMENTS

I

THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION DOES NOT PROHIBIT A STATE FROM CLASSIFYING AND EXEMPTING FROM PERSONAL PROPERTY TAXES INVENTORY WHICH HAD BEEN IMPORTED INTO THE UNITED STATES AND IS DESTINED FOR SHIPMENT OUTSIDE OF THE STATE OF CALIFORNIA

Numerous states classify and exempt personal property in order to encourage local business. Many of these statutes provide an exemption based on the origin of the goods and/or the ultimate destination of the goods.[4/] Section 225 provides such a classification, and the unique question before this Court is whether such distinction in some manner violates the Commerce Clause of the United States Constitution.

4/ Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959); Appeal of Martin (S.Ct. N.C. 1974) 209 S.E.2d 766; State Bd. of Tax Comm'rs. v. Carrier Corp. (S.Ct. Ind. 1977) 365 N.E.2d 1153, 365 N.E.2d 1385; Nash Sales v. City of Milwaukee (S.Ct. Wisc. 1929) 224 N.E. 126. See also, Raley v. Ohio, 264 U.S. 157 (1924), Japan Lines v. County of Los Angeles, 441 U.S. 434 (1979).

It is submitted that a classification statute such as Section 225 does not present a traditional Commerce Clause question. No interstate business is discriminated against. The appropriate question is whether the classification is a reasonable one and will withstand the test of the Equal Protection Clause. Only in the unusual circumstances that the tax might cause embarrassment to the Federal Government in the conduct of its foreign affairs should an inquiry be made under the Commerce Clause.

Central to the decision of the Court of Appeal was the following observation:

> "The effect of this statute is to provide a property tax exemption for goods in foreign commerce. No such exemption is provided, however, for goods in California which are part of interstate commerce. . . ." (Pet. App. B-3)

Having made such observation the court relied on Zee Toys, Inc. v. County of Los Angeles and revsersed, holding Section 225 unconstitutional. It is submitted that both the Court of Appeal in the instant case and in Zee Toys has improperly applied the Commerce Clause in each of the following respects:

A. The goods in question have come to rest and are part of the mass of property in the State of California. They are no longer in commerce. The exemption statute merely provides a classification based on

the property's origin and its ultimate destination. All persons similarly engaged in such commerce are placed on an equal footing. This statute should be judged not under the Commerce Clause, but under Equal Protection doctrines;

B. Even assuming that the Fleisher court and the Zee Toys court are correct in providing an analysis under the Commerce Clause, they have failed to complete that examination. Both courts stopped at the point they found that there was a "distinction" between interstate and intrastate commerce on the one hand and foreign commerce on the other hand; both courts held a per se violation. Such analysis must include a determination of whether or not, on balance, the distinction violates Commerce Clause standards.[5/]

C. Conceding that a distinction has been made between foreign commerce and intrasate and interstate commerce, the Court must also examine the effect of such distinction under the additional

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5/ Complete Auto Transit v. Brady, 430 U.S. 274 (1977); Washington Revenue Dept. v. Association of Washington Stevedoring Companies, 435 U.S. 734 (1978); Boston Stock Exchange v. State Tax Commissioner, 429 U.S. 318 (1977); Hughes v. Alexandria Scrap Corp., 426 U.S. 794 (1976).

rules for foreign commerce set forth in Japan Lines v. County of Los Angeles, supra.

The Commerce Clause of the United States Constitution grants to Congress the power to regulate commerce (1) with foreign nations; (2) among the several states; and (3) with the Indian tribes, thereby establishing and recognizing that there is a distinction between foreign commerce and interstate commerce. This Court stated in Japan Lines, Ltd. v. County of Los Angeles, "Although the Constitution, Art. I, Section 8, Cl. 3, grants Congress power to regulate commerce 'with foreign nations' and 'among the several states,' in parallel phrases, there is evidence that the founders intended the scope of the foreign commerce power to be the greater." (441 U.S. at 448.)

The California Legislature has recognized the distinction between foreogin and interstate commerce in Section 225 of the Revenue and Taxation Code. It is not any discrimination or distinction between types of commerce that is prohibited by the Commerce Clause. The distinction must be one which the court finds creates a burden on commerce which is not outweighed by the State's need to control its own taxing policies.

The problem in this case arises because of the failure to analyze what "discrimination" means under the Commerce Clause. Most of the Commerce Clause cases involving taxation by the states make the distinction between intrastate commerce and interstate commerce. In Philadelphia v. New Jersey, 437 U.S. 617, at 623 (1977):

"Although the Constitution gives Congress the power to regulate commerce among the states, many subjects of potential federal regulation under that power inevitably escape congressional attention 'because of their local character and their number and diversity.' [citation omitted] In the absence of federal legislation, these subjects are open to control by the state so long as they act within the restraints imposed by the Commerce Clause itself. [citations omitted] The bounds of these restraints appear nowhere in the words of the Commerce Clause, but have emerged gradually in the decisions of this Court giving effect to its basic purpose. That broad purpose was well expressed by Mr. Justice Jackson in his opinion to the Court in H. P. Hood & Sons, Inc. v. DuMond, 336 U.S. 525, 537-538:

> "'This principal that our economic unit is the Nation, which alone has the gamut of powers necessary to control of the economy, including the vital power of erecting customs barriers against foreign competition, has as its corollary that the states are not separable economic units. As the Court said in Baldwin v. Seelig, 294 U.S. [511] 527 "What is ultimate is the principle that one state in its dealings with another may not place itself in a position of ecomonic

isolation."'

> "The opinions of the Court through the years have reflected an alertness to the evils of 'economic isolation' and protectionism, while at the same time recognizing that incidental burdens on interstate commerce may be unavoidable when a State legislates to safeguard the health and safety of its people."

The court in neither Fleisher v. County of Los Angeles nor Zee Toys v. County of Los Angeles made any finding or had any evidence before it indicating an actual discrimination which placed an undue burden on interstate commerce. This Court has thoroughly laid to rest doctrines based on an indirect ndirect test or a per se finding of Commerce C.use violations. Washington Revenue Dept. v. Association of Washington Stevedoring Companies, supra; Complete Auto Transit, Inc. v. Brady, supra.

The vital inquiry under the Commerce Clause is whether or not a state is attempting to economically isolate itself from trade with the balance of the states. The term "discriminate against" presupposes that there is someone being "discriminated for." Nothing in the theory or the actual working of Section 225 isolates California from goods or products of other states. Nor does the statute attempt to place California manufactured products, goods, or services in a position advantageous to goods of any other state. The California taxing scheme makes a discrimination involving interstate commerce, but it does not discriminate against interstate commerce. It

does not attempt to place itself in economic isolation nor does it attempt to put interstate commerce in a disadvantageous position, vis a vis intrastate commerce.

The Court of Appeal made no effort to analyze the "discrimination against interstate commerce" but merely noted that interstate commerce was treated differently than foreign commerce; therefore there was a discrimination, and that violated the Commerce Clause. The court in Zee Toys states:

> "Discrimination between (1) interstate transactions cannot be distinguished from (2) discrimination between two types of interstate transactions. Both interstate and foreign transactions are brought within the control of Congress by the same clause of the United States Constitution." (85 Cal. App. 3d at 775.)

It is submitted that to the extent the Zee Toys court relied on Boston Stock Exchange v. State Tax Commissioner, supra, such reliance is misplaced. Boston Stock Exchange involved a classic attempt by a state to provide an economic advantage to its citizens to the detriment of out-of-state business. (See, Maltz, The Berger Court, The Commerce Clause, and The Problem of Differential Treatment, 54 Ind. L. J. 165.) Even though not based on the Commerce Clause, a more appropriate analysis is found in Allied Stores of Ohio v. Bowers, which allowed a distinction to be made between the different types of commerce enumerated in

the Commerce Clause.

What New York was attempting to do was use its unique position in the securities business as an incentive not to sell or buy stock on exchanges in other states. California's taxing scheme has no such "hook" in it, so as to punish or tax to a greater extent someone who has failed to conduct business in California in preference to someone who has funneled their business through California. The exemption is granted to one and all who wish to ship their goods into or out of foreign commerce through California. There is no analysis by which the tax can be construed to extract a penalty from someone in interstate commerce for having failed to conduct their foreign business through California. The California taxing scheme treats all goods of the same class the same.

The test for the types of distinctions a state may make in imposing its taxes is succinctly set forth in Allied Stores of Ohio v. Bowers, supra, at 526-527:

> "The states have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guarantees of the Federal Constitution, the states have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interest. Of course, the states, in the exercise of their taxing power, are subject to

the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The state may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. [citations omitted] 'To hold otherwise would be to subject the essential taxing power of the state to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure.' [citation omitted]"

The Court went on to state, at 528:

"That a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction, or different in state policy. . . .

"Coming directly to the concrete problem now before us, it has repeatedly been held and appears to be entirely settled that a statute which encourages the location within the state of needed and useful industries by exempting them,

though not also others, from its taxes is not arbitrary and does not violate the Equal Protection Clause of the Fourteenth Amendment."

The test for whether a state tax violates the Due Process Clause, and whether it creates an unconstitutional burden upon interstate commerce are virtually identical. This Court stated, in National Bellas Hess v. Dept. of Revenue, 386 U.S. 753, 756:

> "National argues that the liabilities which Illinois has thus imposed violate the Due Process Clause of the Fourteenth Amendment and create an unconstitutional burden upon interstate commerce. These two claims are closely related. For the test whether a particular state exaction is such as to invade the exclusive authority of Congress to regulate trade between the states, and the test for a state's compliance with the requirements of due process in this area are similar."

The Zee Toys court conceded that Petitioners would prevail if the case were to be decided on equal protection grounds. (85 Cal. App. 3d at 777.) The Fleisher court, although not discussing equal protection, relied upon Zee Toys. Both courts ignored the admonition of the Court in Washington Revenue Dept. v. Stevedoring Association, supra, at 748:

"All tax burdens do not inpermissibly impede interstate commerce. The Commerce Clause balance tips against the tax only when it unfairly burdens commerce by exacting more than a just share from the interstate activity."

When the Court speaks of balancing and the balance tipping, it presupposes a weighing of the various interests at stake. The court is called upon to weigh and determine the effect of the tax upon foreign or interstate commerce and intrastate commerce and to determine if the state's tax unduly or unfairly burdens or impedes either type of commerce.

The basic purpose of the Commerce Clause is to insure that no individual state attempts to isolate itself economically from the other states in such a fashion as to favor local interests or intrastate business. Neither the trial court nor the Court of Appeals found that the tax upon interstate commerce in California discriminated against interstate commerce by providing a direct commercial advantage to local business. On the contrary, the court merely speculated that there may be discrimination against an interstates business by giving an advantage to foreign commerce.

The Commerce Clause prevents discrimination against foreign commerce, interstate commerce, or trade with the Indian Nations in such a way that benefits local or intrastate business of a similar nature. It does not address itself to the question as to whether a state may make a

rational distinction between foreign commerce and interstate commerce and treat them differently as long as each is treated fairly in relationship to the state's own area of power, i.e., intrastate commerce. The effect of this Court's ruling in Japan Lines is to create such a distinction. California may tax cargo containers owned by state or U.S. residents, but not those owned by a foreign national.

Congress has not acted to dictate total equality of treatment between foreign commerce and interstate commerce by the states. In Moorman Mfg. Co. v. Bair, 437 U.S. 267 (1978), this Court held that the Commerce Clause gave Congress power to require all states to adhere to uniform rules for division of income, and since they had not done so, the Court would not require such policy, stating:

> "It is clear that the legislative power granted to Congress by the Commerce Clause of the Constitution would amply justify the enactment of legislation requiring all states to adhere to uniform rules for the division of income. It is to that body, and not this Court, that the Constitution had committed such policy decisions."

II

RESPONDENTS COUNTY OF LOS ANGELES AND CITY OF LOS ANGELES HAVE NO STANDING TO CHALLENGE THE CONSTITUTIONALITY OF SECTION 225

In federal courts municipal corporations have regularly been denied standing to attack state legislation as violative of the federal Constitution, on the ground that they have no rights against the state of which they are a creature. E.g., Williams v. Baltimore, 289 U.S. 36, 40 (1933); Trenton v. New Jersey, 262 U.S. 182, 192 (1923); Pawhuska v. Pahhuska Oil Co., 250 U.S. 394, 399 (1919). See also, P. Bator, et al., Hart and Wechsler's, The Federal System (2d ed. 1973) at 182; 13 C. Wright, et al., Federal Practice and Procedure, Section 3531, at 234. The Court of Appeal did not consider or apply this fundamental rule of standing in either Zee Toys or the instant decision.

This Court in Williams v. Mayor & City Council of Baltimore, supra, at 40, stated:

> "A municipal corporatation, created by a state for the better ordering of government, has no privileges or immunities under the federal Constitution which it may evoke in opposition to the will of its creator."

The Williams v. Mayor case presented a situation virtually identical to the one presently before this Court. The State Legislature had granted a tax exemption to certain property within the State. Two cities which were deprived of tax revenue by the exemption attempted to collect the taxes from the receiver in charge of the exempt property, claiming the exemption was unconstitutional. This Court held that a subdivision of a state did not have standing to attack enactments of its State Legislature under the Federal Constitution.

In City of New York v. Richardson, 473 F.2d 923 (1973) at 929, the Court of Appeal held:

> "The city and county plaintiffs' claims against the state defendant were also properly dismissed. Political subdivisions of a state may not challenge the validity of a state statute under the Fourteenth Amendment."

This Court in Data Processing Service v. Camp, 397 U.S. 150, at 153, stated:

> "The question of standing is different. It concerns, apart from the 'case' or 'controversy' test, the question whether the interest sought to be protected by the complainant is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question."

Respondents in this action are governmental subdivisions of the State of California who are

asserting Commerce Clause protection for themselves as against the state legislature of the state in which they are located. No reading of the Commerce Clause can be construed so as to conclude that the City and County of Los Angeles are within the zone of interest to be protected by the Commerce Clause.

A. The Court of Appeal Has Incorrectly Concluded That the Board of Supervisors Have Standing, Even Though Not Parties.

The Court of Appeal in the instant case rejected the standing question by merely stating that the appellants have a personal stake in the outcome, citing Baker v. Carr, 369 U.S. 186, 204 (1962). Zee Toys discussed the standing issue at some length, and concluded that there was standing relying primarily on City of New York v. Richardson, supra, and Board of Education v. Allen, 392 U.S. 236 (1968). Neither of these cases are directly on point. In Board of Education v. Allen, the Court in a footnote stated:

> "Appellees do not challenge the standing of appellants to press their claim in this Court. Appellants have taken the oath to support the United States Constitution. . . . There can be no doubt that appellants thus have a 'personal stake in the outcome' of this litigation. Baker v. Carr . . . ." (392 U.S. at 236, n. 5.)

This footnote in Board of Education v. Allen was dicta, which was later picked up in City of New York v. Richardson, which, without discussion, stated:

> "With respect to standing those plaintiffs who sued in their official capacities may assert constitutional claims against the state under the rule announced in Board of Education v. Allen. . . ." (473 F.2d at 933.)

However, this statement was also dicta, as the Court went on to state:

> "Since it is clear that the District Court would have had jurisdiction over this case had these plaintiffs invoked the provisions of 42 U.S.C. §1983 and its jurisdictional mate, 28 U.S.C. §1343, we believe it would be wise to allow an amendment of the complaint alleging these sections as a jurisdictional basis." Ibid.

The standing issue in both Board of Education v. Allen and City of New York v. Richardson are dicta. In Richardson, the plaintiffs were suing under the civil rights act, and Allen involved civil rights allegations. In those instances the the individual government employees may be subject to the potential remedies on an individual basis. No such threat exists when you have collection of taxes. In Knoff v. San Francisco, 1 Cal. App. 3d 184, 81 Cal. Rptr. 683 (1969), the court held that discrimination could only be raised

by the affected taxpayer, stating:

> "If the standard was wrong in the case of any affected taxpayer [because of discriminatory treatment] only that taxpayer can complain: the City and County of San Francisco cannot, the board of supervisors and the board of equalization cannot, the assessor cannot." Id. at 205.

The Fleisher court and the Zee court cavalierly announced that there is a personal stake in the matter, since the individual members of the Board of Supervisors have taken oaths to uphold the law. In fact the respondents in the instant case are local subdivisions of the State of California, they are the only parties to the lawsuit raising the commerce clause issue. They are not within the zone of interest to be protected by the Commerce Clause. 6/

6/ The following hypothesis is set forth by way of example: Assume that instead of the Boston Stock Exchange having brought suit, the taxing officials of the State of New York gratuitously determined to impose a higher tax on the privileged group, i.e., the taxing officials levied the higher rate on nonresidents that had made a sale on the New York Stock Exchange, contending that it was an unconstitutional violation of the Commerce Clause to give them a lower rate. The individuals taxed brought suit for refund. Clearly, the taxing authority would have an "interest" in imposing the higher rate, and would also have a

(continued on p. 24)

Every public official is charged with the duty of upholding the law, and to that extent has a "personal stake" in the outcome of any litigation, be it a civil rights litigation, a tort action, or tax litigation. However, to hold such indirect right creates jurisdiction would be an emasculation of the standing issue; there would be no tax litigation in which the subdivisions of the state would not have standing.

B. Respondents Are Not Within the Class to Be Protected By the Commerce Clause.

In Zee Toys the court rejected Community Television of Southern California v. County of Los Angeles, 44 Cal. App. 3d 990, 119 Cal. Rptr. 276 (1975); and Appeal of Martin, supra, arguing that they involved equal protection clauses and not the Commerce Clause. It is submitted that both Community Television and Appeal of Martin involved ad valorem property taxes and are directly on point.

6/ (continued from previous page)

"duty to uphold the law." They would not, however, be in the class of persons intended to be protected by the Commerce Clause. The correct position of the courts in such litigation should be that the taxing officials have no standing to raise the constitutional questions. Such questions would have to be raised, as they were, by an out-of-state stock exchange that was "discriminated against" or by an individual taxpayer that had levied upon him the higher rate because of his purchase on an out-of-state stock exchange.

The courts' distinction is without merit. The purpose of the standing issue is twofold, first to insure that a party with a real stake in the constitutional deprivations is the litigant; and second, that a subdivision of the state should not attack its creator.

The analysis by the Court of Appeal misses a fundamental point. It is not enough that a litigant have "a personal stake in the outcome" of the litigation to have standing. As Justice Douglas explained in Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 152 (1970), whenever the issue of standing is raised, "The first question is whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise." The question of standing requires a second inquiry as to "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Id. at 153.

In the present case, the County of Los Angeles and the City of Los Angeles experienced injury in fact because the tax exemption decreases local property tax revenues. The Commerce Clause of the United States Constitution was not, however, intended to protect them against such injury. The purpose of the Commerce Clause was to see that States did not protect local commerce from out-of-state competition. This Court has often declared that the Commerce Clause was intended to secure free trade among the United States. See, e.g., Memphis Steam Laundry Cleaner, Inc. v. Stone, 342 U.S. 389,

395 (1952); H. P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 538-39 (1949). Indeed, this intent appears to have been the framers' purpose. Alexander Hamilton wrote, "An unrestrained intercourse between the States themselves will advance the trade of each, by an interchange of their respective productions, not only for the supply of reciprocal wants at ho me, but for exportation to foreign markets." The Federalist, No. 11, at 52 (Cooke ed. 1961).

In essence, then, the Commerce Clause is intended to protect interstate commerce from local discrimination. The County of Los Angeles and the City of Los Angeles do not engage in interstate commerce and are not within the "zone of interests" protected by the Commerce Clause. At best, these defendants are not asserting their own rights, but are attempting to achieve third party standing by raising the rights of companies engaged in interestate commerce. In order to obtain third party standing, the defendants must show that those third parties are powerless to assert their constitutional rights themselves.